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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,111	11/01/2003	James H. Adams	116382.00064	1871
27885	7590	03/31/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			HAYES, BRET C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,111	<b>Applicant(s)</b> ADAMS, JAMES H.	
	<b>Examiner</b> Bret C Hayes	<b>Art Unit</b> 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-25 is/are rejected.
- 7) ☒ Claim(s) 26-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>15JAN04, 14DEC04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed 15 JAN 04 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### *Claim Objections*

2. Claim 23 is objected to because of the following informalities: line 3, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform and it does not constitute a limitation in any patentable sense – (see *In re Hutchinson*, 69 USPQ 138). Also, line 5, insert --the-- before "trailer attachment plate". Appropriate correction is required.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 20 – 25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of copending Application No. 10/194/934. Although the conflicting claims are not identical, they are not patentably distinct from each other because: claim 11 of copending Application No. 10/194,934 recites, *inter alia*, at line 9, “at least one hanger attached to each beam wherein each hanger comprises a monolithic body formed from extruded aluminum having a swing arm attachment portion and an integrally formed shock absorber bracket”, while claims 20 and 21 recite, “a monolithic hanger body...comprises a swing arm attachment portion and a shock absorber attachment bracket portion...made of aluminum”, which would obviate such a subcombination to one of ordinary skill in the art at the time the invention was made; re – claim 22, Applicant states at page 7, paragraph [0024], lines 2 – 4 of the specification, “the swing arm 110 is adjustably attached to hanger 20 by a fastener 112 eccentrically positioned in circular adjustment disk 114 as well known in the art” and, as such, would be render such as obvious to one of ordinary skill in the art at the time the invention was made; re – claim 23, Applicant further states at page 2, paragraph [0003], lines 1 – 3, “trailer manufacturers have added a steel attachment plate to the top of the steel hanger and a mating aluminum base plate on the bottom frame of the trailer. The steel attachment plate is then bolted to the aluminum base plate,” and, as such, would render such as obvious to one of ordinary skill in the art at the time the invention was made; re – claim 24, claim 11 of the copending Application recites at line 10, ‘extruded

aluminum', which would render such as obvious to one of ordinary skill in the art at the time the invention was made; and, re – claim 25, Applicant discloses such a construction including an opposite non-attachment side comprising a strengthening flange, as at gusset 80, for example, and, as such, would render obvious to one of ordinary skill in the art at the time the invention was made.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

5. Claims 26 – 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record discloses a trailer hanger as claimed except for the structural limitations recited regarding the swing arm attachment portion and the shock absorber attachment bracket portion.

7. This statement is not intended to necessarily state all the reasons for allowance or all the details why the claims are allowed and has not been written to specifically or impliedly state that all the reasons for allowance are set forth (MPEP 1302.14).

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***Conclusion***

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. Due to a relocation, after April 4, 2005, that telephone number will become disconnected and a new telephone number will be in effect (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421 (after April 4, 2005 (571)272 – 7045). The fax number is (703) 872 – 9306.

bh

3/7/05

  
TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER